

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-219194

DATE: July 2, 1985

MATTER OF: John's Janitorial Services, Inc.

DIGEST:

IFB provision which requires that bids remain open for acceptance for a prescribed period of time is a material requirement, and a bid that is ambiguous concerning such a requirement is nonresponsive.

John's Janitorial Services, Inc. protests the rejection of its bid as nonresponsive to invitation for bids (IFB) 1PPCME-85-B-48, issued by the General Services Administration (GSA). John's bid was rejected because it offered an acceptance period of only 30 days, while the IFB required a minimum acceptance period of 60 days. We dismiss the protest.

The protester argues that its bid should be construed as offering 30 days in addition to the required 60 days for a total bid acceptance period of 90 days. Alternatively, John's argues that it intended to comply with the requirements of the IFB and that under the Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.404-2(e), GSA should have waived the defect by allowing it to delete the 30 day provision in its bid.

The minimum bid acceptance period clause in John's bid, as completed by the firm with the number "30," read:

"(c) The Government requires a minimum acceptance period of 60 calendar days . . .

(d) In the space provided immediately below, bidders may specify a longer acceptance period than the Government's minimum requirement.

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The bidder allows the following acceptance period: 30 calendar days.

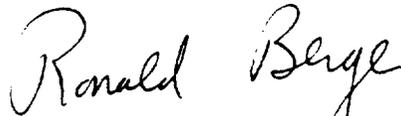
(e) A bid allowing less than the Government's minimum acceptance period will be rejected."

John's says that by inserting 30 days in paragraph (d), it was agreeing to 30 days in addition to the required 60 days for a total of 90 days.

A similar question was presented in Southwest Boat Corp., B-216026, Sept. 10, 1984, 84-2 CPD ¶ 276. We pointed out that the completed clause plainly referred to an acceptance period of only 30 days and that at best, the bid was ambiguous in that even if it could be read as establishing an intention to offer 90 days for acceptance, it also reasonably could be read as reserving to the bidder the option to refuse award if the bid was accepted within 30 days. Moreover, we held that since a provision in a solicitation that requires a bid to remain available for acceptance by the government for a prescribed period of time is a material requirement, the defect could not be waived or cured after bids had been opened. Noting that a bid must be rejected as nonresponsive if it is ambiguous with respect to whether it represents an unequivocal offer to comply with a material requirement, we denied Southwest's protest. For the same reasons, we find the protest here to be without merit.

John's requests a hearing to discuss its protest. Although the Bid Protest Regulations allow conferences on bid protests, the decision to allow a conference is discretionary. 4 C.F.R. § 21.5(a) (1985). Conferences are not appropriate in cases such as this, where it is clear from the protester's initial submission that the protest is without legal merit and therefore does not state a valid basis for protest. See 4 C.F.R. § 21.3(f).

John's protest is dismissed.



Ronald Berger
Deputy Associate
General Counsel